defendant's unlawful relation to attain a permanency which the law prefers to protect rather than disturb. The defendant is held from irregular relations with other women than his second wife by the fact that any new offense will revive his first wife's cause of action. *Sewall* v. *Sewall*, 122 Mass. 156. See *Cooke* v. *Cooke*, 3 Swab. & Tr. 126.

ELECTRIC WIRES — APPLICATION OF THE PRINCIPLE OF FLETCHER *v.* RYLANDS. — The plaintiff, a steam railway company, used electric wires to transmit signals, etc. The defendant on a private right of way alongside began to operate an electric railway, necessarily using so strong a current that the plaintiff's signal system was interfered with. The plaintiff sought to enjoin the defendant from operating its railroad without devices to prevent the interference. *Held*, that the injunction will not be granted. *Lake Shore & Michigan Southern Ry. Co.* v. *Chicago, Lake Shore, & South Bend Ry. Co.*, 92 N. E. 989 (Ind.).

The court refused to apply *Fletcher* v. *Rylands* because that case has been discredited in some courts of this country, and because the defendant was a quasi-public corporation legally authorized to make a non-natural use of its land. But undoubtedly the defendant had collected on its land something likely to do mischief, and was allowing it to escape to his neighbor's damage. The real answer to the plaintiff's claim seems to be an affirmative defense of justification. *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186; *Cincinnati Inclined Plane Ry. Co.* v. *City & Suburban Telegraph Ass'n*, 48 Oh. St. 390; *Hudson River Telephone Co.* v. *Watervliet Turnpike & Ry. Co.*, 135 N. Y. 393. In these cases the defendant escapes because it is using the highway as it is legally authorized to do, and because it is furthering the dominant use of public travel while the telephone companies are making only a subordinate use of the highway. And so in the principal case the defendant, although not making use of a public street, was conducting in a reasonable manner a business essential to the community. The question is not one of responsibility but of justification. See 8 HARV. L. REV. 200, 208.

EVIDENCE — GENERAL PRINCIPLES AND RULES OF EXCLUSION — IRRELEVANCY: VIOLATION OF MUNICIPAL ORDINANCE. — The plaintiff was injured by falling into a hole in the sidewalk in front of a building owned by the defendant. A municipal ordinance required abutting owners to keep the sidewalks in repair. In an action to recover for the injury, the plaintiff introduced the ordinance as evidence of negligence. *Held*, that the evidence was improperly admitted. *English* v. *Kwint*, 44 N. Y. L. J. 847 (N. Y. App. Div., Nov. 1910).

Where the plaintiff is a member of the class for whose benefit the ordinance was passed, nearly all jurisdictions agree that the violation of a municipal ordinance, if it is the proximate cause of injury, is evidence of negligence. *Hamilton* v. *Minneapolis Desk Mfg. Co.*, 80 N. W. 693 (Minn.); *Conrad* v. *Springfield Consolidated Ry. Co.*, 88 N. E. 180 (Ill.). *Contra, Louisville & Nashville R. Co.* v. *Dalton*, 102 Ky. 290. Some courts hold it to be negligence *per se*. See *Pennsylvania Co.* v. *Hensil*, 70 Ind. 569. Others consider it *primâ facie* evidence of negligence. *Chicago & Joliet Elec. Ry. Co.* v. *Freeman*, 125 Ill. App. 318. By the weight of authority it is simply some evidence for the consideration of the jury. *Biesegel* v. *New York Central R. Co.*, 14 Abb. Prac. (N. Y.) 29. Logically it would seem to be material only in cases where reliance on the observance of the ordinance would justify a relaxed standard of care on the plaintiff's part, and knowledge of such reliance would increase the defendant's duty to take care. *Phila. & Reading R. Co.* v. *Ervin*, 89 Pa. St. 71. In the principal case, the ordinance was not designed to protect the members of the public. *City of Hartford* v. *Talcott*, 48 Conn. 525. Its purpose was to secure the performance by property-owners of a duty imposed upon the city. *City of Keokuk* v. *Dis-*

trict of Keokuk, 53 Ia. 352. The defendant remained only under the common-law duty not to create an obstruction or defect in the sidewalk. Hence the court held rightly that the violation of the ordinance is of no evidential value on the question of negligence.

EVIDENCE — SIMILAR FACTS AND OCCURRENCES — HABIT. — In an action for arrears of wages, the defendant offered evidence that it was his habit to pay his laborers at regular intervals. There was no other evidence of payment. *Held*, that the evidence is inadmissible. *Moyer* v. *Berndt*, 19 Pa. Dist. R. 869 (Pa., C. P., Berks Co.). See NOTES, p. 312.

GOOD WILL — RESTRICTIONS ON VENDOR. — Two months before the termination of a trade partnership, two of the partners sold to the third their interest in the assets, good will, and other property of the firm. The purchaser understood that the retiring partners were to engage in a competitive business and the price paid was only slightly greater than the book value of the property transferred. The purchaser sought to enjoin the vendors from soliciting the trade of, or dealing with, the customers of the old firm. *Held*, that they will be enjoined from soliciting the trade of the old customers but not from dealing with them. *Von Bremen* v. *MacMonnies*, 200 N. Y. 41. See NOTES, p. 311.

HOMICIDE — RESPONSIBILITY FOR DEATH CAUSED BY FRIGHT. — The prisoner assaulted A, and thereby so frightened A's mother-in-law, who was near by, that she died from the shock. *Held*, that the prisoner was rightly convicted of manslaughter. *Ex parte Heigho*, 110 Pac. 1029 (Idaho).

The early English law did not hold responsible one whose unlawful act caused death by fright alone. 1 HALE, PLEAS OF THE CROWN, 429. This was probably due to a fear of encouraging prosecution for witchcraft. See STEPHEN, DIG. CRIM. LAW, 6 ed., Art. 242, n. 2. Later authority holds the defendant responsible in such a case, though where the point has arisen the victim was the one toward whom the defendant's threats of violence were directed. *Regina* v. *Dugal*, 4 Quebec 350. The principal case has taken the next logical step in applying the doctrine of the later cases where the person killed is not the intended victim. It may be difficult to prove that death was in fact the result of the unlawful act, but since the burden is on the state to prove its case beyond a reasonable doubt, the difficulty of proof only favors the prisoner. Once it is established that the defendant's unlawful act has in fact caused death, he should be responsible whether death was due to fright or to physical violence. *Cf.* *Regina* v. *Towers*, 12 Cox C. C. 530.

HUSBAND AND WIFE — CONTRACTS BETWEEN HUSBAND AND WIFE — VALIDITY OF SEPARATION AGREEMENTS. — The plaintiff sued for himself and as trustee of the defendant's wife on a bond, given to secure the performance of a separation agreement. When the agreement was made, to avoid scandal and notoriety the defendant and his wife occupied the same apartments but had ceased to have sexual intercourse. *Held*, that the bond is enforceable. *Levy* v. *Goldsoll*, 131 S. W. 420 (Tex., Ct. Civ. App.).

An agreement for future separation, made while the parties are living together, is void, but an agreement made after a separation has actually taken place is valid. *Grime* v. *Borden*, 166 Mass. 198. See 15 HARV. L. REV. 147. The reason for this doctrine against contracts for future separation is that it is against public policy to encourage married people to live apart. See *Bowers* v. *Hutchinson*, 67 Ark. 15, 24. That reason, of course, fails where the parties have already parted. But the cases do not fix any rule as to what constitutes sufficient present separation to enable a valid separation agreement to be made. In the principal case, however, it is obvious that the parties are merely nominally living together. The law regards very highly the importance of marital